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**December 2, 2004**

**OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

|                 |                            |
|-----------------|----------------------------|
| Name of Case:   | Personnel Security Hearing |
| Date of Filing: | April 13, 2004             |
| Case Number:    | TSO-0092                   |

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A Department of Energy Operations Office (DOE Operations Office) suspended the individual's access authorization under the provisions of Part 710. As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should be restored.

**I. Background**

In September 1997, the individual's employer, a contractor at a DOE facility, requested an access authorization for the individual. The individual received a clearance in 1998 after a routine investigation. In February 2003, the individual was arrested for Driving While Intoxicated (DWI), which created a security concern, and in April 2003, the individual participated in a Personnel Security Interview (PSI). In May 2003, a DOE consultant-psychiatrist evaluated the individual and diagnosed him as suffering from alcohol abuse without adequate evidence of rehabilitation or reformation.

In February 2004, DOE informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his eligibility for access authorization. Notification Letter (February 9, 2004). The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. ' 710.8 (f), (h), (j) and (l) (Criteria F, J, H and L). DOE invoked Criterion F based on information in its possession that the individual "has deliberately misrepresented, falsified, or omitted significant information from a . . . Questionnaire for Sensitive Positions . . . ." Notification Letter at 2. According to the Notification Letter, the individual omitted a 1994 DWI arrest and his 1996 use of marijuana. The DOE Operations Office invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. In this regard, the Notification Letter states that a DOE consultant-psychiatrist diagnosed the individual as suffering from alcohol abuse without adequate evidence of rehabilitation or reformation. The psychiatrist also

opined that alcohol abuse was an illness or mental condition which causes, or may cause, a significant defect in the individual's judgment or reliability, thereby invoking Criterion H. Criterion L is invoked when a person has allegedly engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. The DOE Operations Office invoked Criterion L based on the DWIs and discrepant information regarding the individual's use of alcohol and illegal drugs.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. ' 710.21(b). On April 15, 2004, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. ' 710.24, I set a hearing date. At the hearing, a personnel security specialist and the DOE consultant-psychiatrist (DOE psychiatrist) testified on behalf of the agency. The individual testified on his own behalf and also elected to call five other witnesses. The transcript taken at the hearing shall be hereinafter cited as ATr. Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as AEx. Documents that were submitted by the individual during this proceeding are also exhibits to the hearing transcript and shall be cited as AIndiv. Ex.

## II. Analysis

The applicable regulations state that A[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. ' 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (Aclearly consistent with the national interest standard for the granting of security clearances indicates Athat security determinations should err, if they must, on the side of denials); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. ' 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or

recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should be restored because I conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. ' 710.27(a). The specific findings that I make in support of this determination are discussed below.

### **A. Findings of Fact**

In 1994, while attending college, the individual was arrested for DWI. Ex. 4-2 (PSI I) at 8. The charge was reduced to Reckless Driving and the individual paid a small fine. *Id.* at 11-12. Between March and April 1996, while still attending college, the individual used marijuana three times. PSI I at 26-29. After graduation, the individual was hired by a DOE contractor who requested a security clearance for the individual in 1997, and during the investigation, the individual completed two QNSPs; one dated September 30, 1997, and one dated October 2, 1997. Ex. 3-12, 3-13. The individual disclosed his conviction for Reckless Driving on the October QNSP. Ex. 3-12 at 1. The individual did not disclose his conviction in the September 1997 QNSP. Ex. 3-13 at 7, 9. He did not disclose his marijuana use. Ex. 3-12, Ex. 3-13. However, during a PSI conducted in March 1998, the individual acknowledged the arrest and also disclosed his 1996 marijuana use. PSI I at 8, 26-30. During that PSI the individual signed a drug certification stating that he would not use drugs in the future. Ex. 3-10; PSI I at 26-31. His clearance was granted in 1998. Ex. 3-1; Ex. 3-5. The individual completed six additional QNSPs between 1998 and 2002, but omitted the arrest and marijuana use from each. Ex. 3-4 thru Ex. 3-9.

In February 2003, the individual reported to DOE security that the police stopped him for speeding and then arrested him for DWI. Ex. 3-3. In April 2003, DOE security conducted another PSI with the individual and the individual also agreed to participate in an evaluation conducted by a DOE consultant-psychiatrist. Ex. 4-1 (PSI II). In June 2003, the psychiatrist concluded that the individual had used alcohol habitually to excess almost continually from 1990 to 2003. Ex. 2-1 (Report) at 24-25. The psychiatrist diagnosed the individual with alcohol abuse without adequate evidence of rehabilitation or reformation. Report at 25. According to the psychiatrist, he informed the individual that in order to show rehabilitation, the individual should either: (1) attend AA for a minimum of 100 hours during one year, with a sponsor, and be completely abstinent for one year; or (2) complete a 50- hour professionally led substance abuse treatment program, for a minimum of six months, and be completely abstinent from alcohol for a minimum of one year. *Id.* at 26. If the individual did not attend either of the two rehabilitation programs, he could demonstrate reformation by two years of sobriety. *Id.* at 26.

### **B. DOE's Security Concerns**

The excessive use of alcohol raises a security concern because of its intoxicating effect. Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases. *Personnel*

*Security Hearing*, OHA Case No. VSO-0417, 28 DOE & 82,798 (2001), quoting *Personnel Security Hearing*, OHA Case No. VSA-0281, 27 DOE & 83,030 at 86,644 (2000). In this case, the individual was diagnosed by a DOE psychiatrist as suffering from alcohol abuse. According to the psychiatrist, the individual's alcohol abuse had the effect of causing a significant defect in the individual's judgment so that he operated a motor vehicle while intoxicated, violated the law, and was arrested. Alcohol intoxication caused the individual to exhibit unusual conduct that led to the alcohol-related arrests. Therefore, DOE's security concerns are valid and the agency has properly invoked Criteria H, J, and L in this case.

As regards Criterion F, the DOE personnel security specialist testified that the individual's omissions on his QNSPs caused DOE security to question whether the individual could be trusted to be honest and to protect classified information. Tr. at 19; Ex. 1-1. The agency must be assured that the individual can be trusted not to disclose information to those without a need to know. Tr. at 19. Security programs are based on trust, and an individual could be subject to coercion because of a dishonest act. *Personnel Security Hearing*, 28 DOE ¶ 82,829 at 85,871, OHA Case No. VSO-0466 (2001); *affirmed* (OS, April 3, 2002). Thus the security concern regarding the omissions is also valid, and the agency has properly invoked Criterion F in this case.

## **C. Hearing Testimony**

### **1. The DOE Psychiatrist**

The DOE psychiatrist testified at the beginning of the hearing that he had reviewed the individual's file prior to the interview and was concerned by the individual's two DWI arrests and apparent minimization of his alcohol problem. Tr. at 27. The psychiatrist interviewed the individual for almost three hours in May 2003. *Id.* at 26. He did not, however, order laboratory tests because the individual's drinking appeared to be very minimal in the months preceding the evaluation. *Id.* at 29. Nonetheless, the individual met the criterion for alcohol abuse because of his recurrent substance use within a 12-month period while operating a vehicle. *Id.* at 29-32. Based on the above, the psychiatrist concluded that the individual suffered from alcohol abuse, which is considered an illness, and that the illness caused a significant defect in the individual's judgment or reliability. *Id.* at 33. The psychiatrist concluded in his report that the individual should attend 100 hours of AA or six months of a professional alcohol treatment program, and maintain sobriety for one year. Tr. at 32. The psychiatrist testified that he normally recommends two to three years of sobriety, but was more lenient in this recommendation because he did not think that the individual was an alcoholic. *Id.* at 33.

The psychiatrist also examined and commented on the exhibits that the individual presented at the hearing as evidence of mitigation of the security concern. The individual presented proof of attendance at 12 counseling sessions in a substance abuse program, and the psychiatrist concluded that this by itself was not adequate evidence of rehabilitation. *Id.* at 34. The psychiatrist noted that a state Alcohol Screening Certificate concluded that the individual did not require alcohol treatment, confirming his opinion at the time of the evaluation that the individual was not an alcoholic. *Id.* at 35; Indiv. Ex. 4. Also

in the individual's favor were December 2003 laboratory test results that showed normal liver function. *Indiv. Ex. 6, Tr. at 35.* The psychiatrist gave the most weight to attendance sheets that showed that the individual had attended 92 hours of AA meetings since January 2004. *Tr. at 34-35.* According to the psychiatrist, the individual had attended a sufficient number of hours to provide adequate evidence of rehabilitation, but he withheld his final opinion on the individual's rehabilitation until he could assess the individual's testimony about his experience in AA. *Id. at 35.*

## **2. Other Witnesses**

As evidence of rehabilitation and reformation, the individual presented the testimony of two colleagues, his girlfriend, his counselor, and a fellow AA member. *Tr. at 37-78, 97-106.* The individual's colleagues testified that they had not seen him drink alcohol since his DWI. *Tr. at 40, 50.* They testified that at functions where alcohol is served, the individual refuses to drink. *Id., at 41, 52.* One of the colleagues has known the individual since 2001, and considered the individual's consumption to be "light to moderate" prior to his DWI. *Id. at 43.* Both colleagues testified that the individual has told them that he enjoys his AA meetings and considers them a positive experience. *Id. at 44, 51.* The colleague who has known the individual since 2001 testified that the individual has told him that he wants to maintain sobriety, and has been open with others about his alcohol problem. *Id. at 47.*

The AA member met the individual at a meeting in January 2004, and considers the individual a very positive person. *Id. at 58.* The individual has asked the witness to be his sponsor. *Id. at 60-61.* This witness credibly testified about his own positive experiences with AA and described a close friendship and mentoring relationship with the individual. *Id. at 57-60.* The witness introduced the individual to the counseling program, and the individual began attending shortly thereafter. *Id. at 63.* The individual had clearly expressed to the witness his intention to attend AA indefinitely. *Id. at 65-66.* The witness talks to the individual often over the phone, and he testified that both men are facing their problem with a positive attitude. *Id. at 59-60, 66.* He stated that the individual is an active participant in both AA and their counseling program. *Id. at 68.*

The individual's counselor, a state licensed alcohol and drug abuse counselor, testified by telephone at the hearing. *Tr. at 97-107.* The counselor leads a 16-week substance abuse program that is designed to enable clients to identify and develop skills to deal with life issues without alcohol. *Id. at 100.* The counselor testified that the individual did not appear to be a heavy drinker. *Id. at 102.* He could not predict the probability of a relapse, but acknowledged that the individual had "excellent participation" in the group. *Id. at 103.*

The individual met his girlfriend, who also testified at the hearing, in February 2003 (about three weeks prior to his DWI arrest). *Id. at 69.* The girlfriend testified that during their friendship, she has never seen the individual drink alcohol. *Id. at 71.* She accompanied the individual to his DWI class as a "DWI Support Person." *Id. at 73; Indiv. Ex. 2.* The girlfriend explained that their friends and family respect the individual's decision to abstain from alcohol, that the couple has cheerfully become the "designated drivers" of their social set, and that there is no alcohol at the individual's home. *Id. at 75-76.* She confirmed that

the individual describes AA as a positive influence on his life, and she believes that he will continue to attend AA meetings. *Id.* at 77.

### **3. The Individual**

The individual testified that he has abstained from alcohol since May 2003, more than one year prior to the hearing. *Id.* at 92. He began court-ordered DWI classes in November 2003 and completed them in February 2004. *Id.* at 81. The individual testified at the hearing that he began attending AA in January 2004 in order to provide documentation of his efforts to abstain from alcohol. *Id.* He considered AA to be “disturbing” initially, but then recognized that he was in the early stages of what some of the other AA members had experienced. *Id.* at 84. He felt “relieved” after he met the witness who would become his sponsor. *Id.* at 86. According to the individual, the “hardest part of peer pressure is gone” because his peers know that he is sober. *Id.* at 87. His parents and other family members are also aware of his alcohol problem. *Id.* at 93. He testified that he plans to continue attending AA. *Id.* at 87.

DOE counsel asked the individual why he disclosed his 1994 DWI and 1996 marijuana use in his 1998 PSI, but omitted these events from his QNSPs. *Id.* at 89. The individual stated that he read the QNSP question as asking whether he had been charged and convicted, not charged or convicted. *Id.* He was charged with DWI, but because that charge was later reduced to Reckless Driving, he answered in the negative. *Id.* at 89.

### **D. Evidence of Rehabilitation and Reformation**

At the conclusion of the hearing, the DOE counsel asked the psychiatrist to offer an updated diagnosis of the individual’s alcohol abuse, based on additional evidence presented at the hearing. *Tr.* at 106. The DOE psychiatrist answered that alcohol abuse is time-dependent, and after 12 months of not meeting any criteria, the individual no longer suffers from alcohol abuse. *Id.* at 106-107. The psychiatrist concluded that the individual has indeed shown adequate evidence of rehabilitation or reformation from the diagnosis of alcohol abuse in May 2003. *Id.*

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE & 82,827 (2001). In this case, the DOE psychiatrist persuasively testified that the individual has presented adequate evidence of rehabilitation from the diagnosis of alcohol abuse. The individual’s counselor described the individual’s enthusiastic participation in the counseling group. The individual has submitted evidence for the record that documents the requisite degree of rehabilitation recommended by the DOE psychiatrist. Thus, I find that the individual has mitigated the security concerns of Criteria H and J. As regards Criterion L, the arrests at issue occurred while the individual was under the influence of alcohol. Our cases require that an individual demonstrate rehabilitation or reformation from an alcohol problem in order to mitigate the concerns raised by alcohol-related arrests. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE & 82,827 (2001). As discussed above, the individual has presented

adequate evidence of rehabilitation or reformation from alcohol abuse. Therefore, I further find that the individual has mitigated the Criterion L security concerns.

As regards Criterion F, after reviewing the evidence in the record and assessing the credibility of the individual's testimony at the hearing, I conclude that he has mitigated the security concern arising from the omission of significant information on his QNSPs. First, the record does not show any evidence of deliberate falsification or omission. See *Personnel Security Hearing*, 28 DOE ¶ 82,829 at 85,872, OHA Case No. VSO-0466 (2001); *affirmed* (OS April 3, 2002) (describing factors to consider in mitigation of falsification). To the contrary, in the 1998 PSI the individual acknowledged both his 1994 arrest and his 1996 drug use. Second, the individual testified credibly at the hearing that he did not read the QNSP questions concerning police records correctly. As a result, he answered the questions based on a faulty interpretation. Finally, the personnel security specialist acknowledged that security personnel had never questioned the individual about the discrepancies during his PSIs. Tr. at 17, 22-23. DOE security apparently deemed the matter resolved since the individual's clearance was granted in 1998 and his subsequent QNSPs were accepted without question. Thus, the individual did not realize his mistake until he received the Notification Letter in February 2004, almost seven years after he began submitting QNSPs. In summary, this is not a case of deliberate falsification of security documents—the individual did not intend to hide his past from DOE security, and he openly acknowledged past arrests and drug use during his PSIs. As hearing officer, I must consider the relevant factors and circumstances connected with the individual's conduct, and I conclude that the individual's credible explanation of his interpretation of the QNSP questions, in addition to his honesty during the PSIs, have mitigated the Criterion F security concern.

## **II. Conclusion**

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. ' 710.8 (f), (h), (j) and (l) in suspending the individual's access authorization. However, the individual has presented adequate mitigating factors that alleviate the legitimate security concerns of the DOE Operations Office. In view of these criteria and the record before me, I find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored.

Valerie Vance Adeyeye  
Hearing Officer  
Office of Hearings and Appeals

Date: December 2, 2004